

### **DETAILED ACTION**

1. The following is a Final Office action in response to communications received January 15, 2008. Claims 1-20 and 39-42 have been canceled. Claims 25, 32, 35-38, 43, and 45-47 have been amended and claims 21-38 and 43-48 are now pending.

### ***Response to Amendments***

2. Applicant's amendments to the claims 25, 32, 35, 39, 41, 43, 45 and 47 are sufficient to overcome the claim objections set forth in the previous office action.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21-38 and 43-48 stand rejected under 35 U.S.C. 102(b) as being anticipated by Cadman WO 00119393. For the ease of referencing the specific limitations, US 6648651 were used. See the previous office action for details.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 21-38 and 43-48 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-15 and 17-19 of U.S. Patent No. 6648651. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reason stated from the previous office action. See the previous office action for details.

### ***Response to Arguments***

7. Applicant's arguments filed January 15, 2008 have been fully considered but they are not persuasive.

8. The Examiner reminds that it is the Applicant responsibility to read the entire disclosure of the prior art cited for rejections including the pertinent references cited.

9. In response to applicant's arguments that Cadman '651 does not teach questions presented in systematic and structured order, progressing from the easiest to the hardest type. The Examiner disagrees. Cadman '651 positively teaches Stankov's Tests

of Cognitive Abilities and good tests of fluid abilities is the existence of items that systematically vary in difficulty inherently teaches a questions presented in systematic and structured order, progressing from the easiest to the hardest type (see column 6 lines 54-67 and column 7 lines 1-4).

10. In response to applicant's arguments that Cadman '651 does not teach the assessment has a plurality of questions that are chosen from a plurality of question types ranging progressively from an easiest question type to a hardest question type. The Examiner disagrees. Cadman '651 positively teaches the increased item difficulty characterized by an increase in the tests' correlations with traditional tests of intelligence and increase in complexity (see column 7 lines 5-17).

11. In response to applicant's arguments that Cadman '651 does not teach the method including (1) delivering to the candidate a question selected from the easiest question type; and (2) allowing the candidate to answer the question and, delivering to the candidate sequentially one or more questions from the same question type. The Examiner disagrees. Cadman '651 positively teaches sequentially presents the series of questions and obtaining from the candidate an answer to each of the questions ( see column 2 lines 20-59).

12. In response to applicant's arguments that Cadman '651 does not teach the method of determining a quantifier in response to the answers provided by the candidate to the questions of the easiest question type, and if the quantifier is above a predetermined threshold for delivering to the candidate a question selected from another one of the question types, delivering to the candidate a question selected from

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the other one of the question types and, thereafter, delivering to the candidate one or more questions from the same other one of the question types. The Examiner disagrees. Cadman '651 positively teaches the above claim limitations (see column 4 lines 1-40).

13. In response to applicant's arguments that Cadman '651 does not teach the apparatus including a processor for driving a display to deliver to the candidate a question selected from the easiest question type, and an input device for allowing the candidate to answer the question. The Examiner disagrees. Cadman '651 positively teaches the Stankov's Tests of Cognitive Abilities and good tests of fluid abilities is the existence of items that systematically vary in difficulty and the above claim limitations (see column 3 lines 14-44, column 6 lines 54-67 and column 7 lines 1-4).

14. In response to applicant's arguments that Cadman '651 does not teach the apparatus including a calculation module being responsive to the answers provided by the candidate to the questions for determining a quantifier, processor responsive to the quantifier being above a predetermined threshold for driving the display to deliver to the candidate a question selected from another one of the question types and, delivering to the candidate one or more questions from the other one of the question types. The Examiner disagrees. Cadman '651 positively teaches a system (see column 3 lines 14-44) and that inherently have a calculation module as claimed in order to provide Stankov's Tests of Cognitive Abilities (see column 6 lines 54-67 and column 7 lines 1-4).

15. In response to applicant's arguments that Cadman '651 does not teach the apparatus including an assessment module responsive to the quantifier and the

question types for which answers have been provided to derive an assessment of the relative cognitive ability of a candidate. The Examiner disagrees. Cadman '651 positively teaches an apparatus including assessment module (column 41-67 and column 8 lines 1-32).

16. Considering the obviousness-type double patenting, the applicant's arguments that Cadman '651 claims does not disclose the question types, determining a quantifier, a predetermined threshold, delivering questions from another question type, and using the quantifier and question types to make an assessment on the cognitive ability of the candidate. The Examiner disagrees. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time of the invention that the present claims are read to Cadman '651 in order to provide testing the candidates to work in a predetermined position and for conducting other tests.

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALVIN L. CARLOS whose telephone number is (571)270-3077. The examiner can normally be reached on 7:30am-5:00pm EST Mon-Fri (alternate Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin L Carlos/  
Examiner, Art Unit 3714  
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Supervisory Patent Examiner, Art Unit 3714